

REMARKS

Upon entry of the present amendment, claims 1-4 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the specification, claims, drawings and abstract do not incorporate new matter into the application as originally filed. For example, the specification has been amended to correct typographical errors at page 1 and to prevent a redundancy by deleting the last paragraph at page 14.

Regarding the amendment to the drawings, this simply makes a minor correction requested in the outstanding Office Action, wherein the lines from "8" are now dashed to denote underlying structure.

Regarding the amendments to the claims, these simply serve to ensure that the claims fully comply with 35 USC § 112, by providing positive antecedent basis for structure recited therein, and at the same time particularly and distinctly setting forth the invention which Applicants regard as their own.

Regarding the amendment to the abstract, this has simply been done in order to provide an abstract of "no more than 150 words in length" as requested in the Office Action.

Objection to Abstract

The outstanding objection to the abstract is requested to be withdrawn based upon the submission herewith of a new abstract, which is less than 150 words in length.

Drawing Objection

The Examiner has previously objected to Figure 1, indicating that lines from "8" should be dashed to denote underlying structure. Enclosed herewith is a corrected formal drawing, wherein "8" in Figure 1 utilizes dashed lines to denote underlying structure. Withdrawal of the objection is thus requested.

Specification Objection

The specification has been objected to under 35 USC § 112, first paragraph. Reconsideration and withdrawal of this objection is requested based upon the amendment of pages 1 and 14 of the specification herein. It is noted that the amendments to the specification are in accordance with comments set forth in paragraph numbers "3." and "4." of the Office Action.

Claim Rejections Under 35 USC § 112

Claims 1-4 have been objected to based on certain informalities, and have also been rejected under 35 USC § 112,

second paragraph. Reconsideration of the claim objection and claim rejection under 35 USC § 112, second paragraph, is required based upon the amendments to the claims made herein.

Further to the above, it is noted that claims 1-4 as instantly amended positively and distinctly set forth Applicants' invention as they see fit. Proper antecedent basis is utilized in the claims for all elements recited. Accordingly, withdrawal of the objection and rejection of claims 1-4 under 35 USC § 112, second paragraph is required.

Claim Rejections Under 35 USC § 102

Claims 1-4 have been rejected under 35 USC § 102(b) as being anticipated by Clear et al. US 5,368,584 (US '584) and Buell et al. US 5,221,274 (US '274). Reconsideration and withdrawal of this rejection is requested based upon the following considerations.

Distinctions over the Cited Art

In the US '584 and US '274 patents, the presence of an elasticized waist feature is provided, which is on the opposite side of where the fastening tapes 92 exist (i.e., on the front side of a wearer), with the same being a main aspect of each of the inventions thereof.

For example, in the US '274 patent, claim 1 thereof recites as follows (wherein item numbers and bold italics have been added for emphasis):

1. A disposable absorbent article having a lateral centerline, and a lateral direction parallel to the lateral centerline, the absorbent article comprising: a containment assembly comprising an absorbent core having side edges and waist edges; and

an elastic waist feature at least extending longitudinally outwardly from one of said waist edges of said absorbent core, ***said elastic waist feature comprising***

an elasticized waistband comprising

(i) ***a shaping panel zone 136*** being elastically extensible in at least the lateral direction,

(ii) ***a waistline panel zone 138*** resiliently flexurally joined with said shaping panel zone, said waistline panel zone being elastically extensible in at least the lateral direction, and

(iii) a predisposed, resilient, waistband flexural hinge zone joining said shaping panel zone and said waistline panel zone for allowing relative flexural bending between said shaping panel zone and said waistline panel zone when forces are applied and for providing a restoring force to resiliently return said shaping panel zone and said waistline panel zone to essentially their preceding in-use configuration when the forces are removed.

Likewise, while at column 51, lines 41-45 of the US '274 patent, it may be disclosed that:

"Since in a preferred embodiment of the elastic waist feature, a segment of the backsheet has been removed to form the waistline panel zone, the extension forces of the waistline panel zone are less than the extension forces of the shaping panel zone."

However, the above description pertains to the side of the absorbent member that does not have fastening tapes, and does not

pertain to the side of the absorbent member that contains fastening tapes. This is of course, completely unlike claim 1 of the present invention (currently amended), which is reproduced below (with *emphasis added*):

1. A disposable diaper which has a substantially elongate configuration and comprises a main body having a pair of side edges, and the main body having a liquid-permeable topsheet, a liquid-impermeable backsheet, and a liquid-retentive absorbent member interposed between said topsheet and said backsheet ***and a pair of fastening tapes provided on respective side edges of said main body,***

a waist opening portion and ***an under-waist portion being present in a portion of the diaper having said fastening tapes,*** the waist opening portion being provided with a waist elastic member and the under-waist portion being provided with a plurality of under-waist elastic members, respectively, in a width direction of the diaper, and

a pair of longer side portions of said diaper being each respectively, provided with one of a pair of leg elastic members,

wherein said under-waist elastic members are fixedly disposed in at least areas extending outwardly from each longer side of the absorbent member in their stretched state so as to manifest contractibility but are not disposed in at least a middle of an area where said absorbent member exists, and said under-waist portion has a greater extension stress than said waist opening portion in a width direction of the diaper.

Similarly, while the "waistline panel zone 138" or "shaping panel zone 136" of the cited US '584 and US '274 references does exist outwardly, they are not from each longer side of the absorbent side member, but instead from the shorter side of the absorbent member (as is shown in Fig. 1 or 2B of the Buell et al. US '274 reference being relied on by the USPTO). This is quite different

from the instant invention being claimed (as recited in above claim 1), wherein "said under-waist elastic members are fixedly disposed in at least areas extending outwardly from each longer side of the absorbent member...."

Apart from the above considerations, each of the US '584 and US '274 references have elastic side panel and elastic waistband on the side thereof where fastening tapes exist. However there is no citation of any comparison between their elasticity's, even though the following can be ascertained, based on the description at column 45, lines 23-30 of the US '274 reference; namely, that the extension forces of the side panels can be less than the extension forces of the waistband (which is quite the opposite to the instant invention being claimed):

"While the extension forces of the elasticized waistband 35 may be greater than the extension forces of the elasticized side panels 30, in a preferred embodiment of the present invention, the extension forces of the elasticized waistband 35 at its designed extensions is less than or equal to the extension forces of each elasticized side panel 30 at its designed extensions."
(see column 45, lines 23-30 of US '274; emphasis added)

Further, in the US '274 reference, the side panel is attached to the other members in a substantially *untensioned* condition, whereas in the instant invention the plurality of body surrounding elastic members are attached with an extended form.

"In an especially preferred embodiment, the elastic side panel member 90 is operatively associated in the ear flap 88 by joining the elastic side panel member 90 to the topsheet 24, the backsheet 26, or both while the elastic side panel member 90 is in a substantially **untensioned** condition." (see column 35, lines 57-62 of US '274; *emphasis added*)

Such a recitation in the cited art is of course contrary to claim 1 of the instant invention, which recites "**in their stretched state so as to manifest contractibility...**"

The above stated differences clearly evidence that neither the US '274 nor the US '584 patent is capable of anticipating applicants claimed invention. This is because neither of such references disclose or teach each of the instantly claimed elements.

It is noted that neither does the cited art of record render the instant invention obvious under the provisions of 35 USC § 103(a), since such references, whether considered singularly or in combination, completely fail to provide for, or otherwise disclose a disposable diaper as instantly claimed and provide no motivation to those of ordinary skill in the art that would have allowed them to arrive at the instant invention as claimed.

CONCLUSION

Based upon the amendments and remarks presented herein, the Examiner is respectfully requested to issue a Notice of Allowance clearly indicating that each of the pending claims 1-4 are allowed

and patentable under the provisions of Title 35 of the United States Code.


Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By


John W. Bailey, #32,881

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

JWB/enm
0445-0315P

Attachment(s): Corrected Formal Drawing
Rewritten Abstract of the Disclosure